

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications)
and Energy on its own motion, pursuant to G.L. c.159,) D.T.E. 02-15
§§ 12 and 16, into the regulations, practices, equipment,)
appliances, and services of Network Plus, Inc.)

MOTION FOR PROTECTIVE TREATMENT

Network Plus, Inc. (“Network Plus”) hereby moves that the Department of Telecommunications and Energy (“Department”) grant protective treatment pursuant to G.L. c. 25, § 5D to Network Plus’ response to the Department’s first Record Request (DTE-1) in the above-captioned proceeding. The Request made by the Department calls for the release of documentation that Network Plus considers highly confidential and proprietary. The documentation is a confidential, negotiated letter of intent (“LOI”) between Network Plus and its parent company, Network Plus Corp., and Broadview Networks Holdings, Inc. (“Broadview”). As described in more detail below, the documentation represents the on-going negotiations between the two companies during a period in which other companies may be evaluating Network Plus in anticipation of an public auction to be held on March 8, 2002 as part of Network Plus’ chapter 11 bankruptcy proceeding.¹ Network Plus and its upcoming auction proceeding would be substantially harmed if the information contained in response to DTE-1 were to be disclosed publicly at this time.

The documentation provided by Network Plus in response to Record Request DTE-1 meets the standards set forth in G.L. c.25, §5D by which the Department determines whether

¹ Network Plus Corp. and certain of its affiliates filed for bankruptcy on February 4, 2002 and currently operate under the protection of the U.S. Bankruptcy Code before the U.S. District Court for the District of Delaware (the “Bankruptcy Court”). *See* Chapter 11 Case No. 02-10341 (PJW) (Bankr. D.D.E.).

information filed by a party should be protected from public disclosure. General Law c. 25 §5D provides, in part, that

[t]he department may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need.

The document provided by Network Plus in response to DTE-1 constitutes “confidential, competitively sensitive, or other proprietary information.” Specifically: (1) the information is known only to certain individuals of Network Plus and Broadview, and their respective counsel, necessary to negotiate an agreement; (2) the information is subject to a confidentiality agreement between the parties; (3) the information has not been made available or released to other employees or to third parties who have not agreed to maintain the confidentiality of such information; (4) the terms of the arrangement continue to be negotiated and are subject to change; (5) Network Plus and Broadview have negotiated the document in their efforts to permit Network Plus’ operations to continue and to enable continued competition in the Massachusetts and other local exchange markets; and (6) competitors would have no means of duplicating or acquiring the document other than through release of the information in this docket. Network Plus therefore submits that the document submitted in response to Record Request DTE-1 be identified as proprietary information, competitively sensitive in nature, and eligible for protective treatment under G.L. c.25, §5D.

The second part of G.L. c.25, §5D requires a showing that there is a need for protection of the requested information. In Network Plus’ case, this information should not be disclosed publicly because it will expose commercially sensitive, proprietary aspects of the Company’s efforts to obtain a buyer as part of its pending bankruptcy proceeding. As a company subject to a competitive auction in two weeks, Network Plus’ negotiations must, at this time, remain confidential to preserve the integrity of the bankruptcy sale process and not chill or deter other

bidders. Disclosure of the LOI would be counter-productive to the purpose of the upcoming scheduled auction. This information is not available anywhere else, and could be used by competitors to undercut the value of Network Plus at the auction.

Finally, G.L. c. 25, §5D states that where the need for protective treatment exists, the Department “shall protect only so much of the information as is necessary to meet such need.” Network Plus has attempted to tailor its request for protective treatment carefully, however, the entire LOI contains confidential information as each part is a negotiated piece of the whole document. Network Plus therefore submits that there is a need to protect the entire LOI provided in response to Record Request DTE-1.

As stated at the hearing on February 25, 2002 at which the Department made its record request, Network Plus has no objection to making the LOI available to the Office of the Attorney General subject to execution of a suitable confidentiality agreement. Network Plus submits that there is no need for any other parties in this proceeding, all of whom are competitors of Network Plus, to have access to this confidential information in order to participate meaningfully in this proceeding. By contrast, disclosing this competitively sensitive material could potentially harm Network Plus. Accordingly, Network Plus respectfully requests that the Department rule that this information submitted by Network Plus, which contains a “Confidential and Proprietary” designation, be kept under seal by the Department and protected from public disclosure. If the Department should find that portions of the information for which protective treatment is sought do not qualify for such treatment, Network Plus requests that the

Department provide reasonable notice to Network Plus prior to releasing any of the information for which protective treatment has been requested in this Motion.

Respectfully submitted,

Mitchel Appelbaum (BBO #558579)
Hale and Dorr, LLP
60 State Street
Boston, MA 02109
(617) 526-6000 (Tel.)
(617) 526-5000 (Fax)

Jean L. Kiddoo
Kathleen L. Greenan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 20007
(202) 424-7500 (Tel)
(202) 424-7645 (Fax)

Dated: February 26, 2002

COUNSEL FOR NETWORK PLUS, INC.

**BEFORE THE
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

RESPONSE OF NETWORK PLUS, INC.
TO THE FIRST RECORD REQUEST OF THE DEPARTMENT

D.T.E. 02-15

DTE 1-1 Please provide the Department with a copy of the executed Letter of Intent
between Network Plus and Broadview.

Response: CONFIDENTIAL AND PROPRIETARY DOCUMENT PROVIDED UNDER
SEAL SUBJECT TO MOTION FOR PROTECTIVE ORDER.